

REMARKS

Claims 1-2, 4-9, 14-18 and 21-23 are pending in this application.

Claims 1-2, 4, 9, 14-15 have been amended above. As to reciting “theater show” in claims 1 and 14, see, e.g., the specification at page 5, lines 7+. As to claim 9 reciting “of a tune from the show,” see, e.g., original claim 17. Other amendments to Claims 1-2, 4, 9, 14-15 are for simplicity and/or to correspond to the base claim as amended. Claims 3, 10-13 and 19-20 have been canceled above without prejudice, for simplifying this application and reducing issues.

As to new claims 21-22, see, e.g., Examples 1 and 2 in the specification. As to new claim 23, see, e.g., the specification at the sentence bridging pages 4-5.

At page 2 of the Office Action, Claims 1-4, 6-7, 9 and 14-15 have been rejected under 35 U.S.C. 102(e) as being anticipated by Matsukawa.¹

Applicant respectfully traverse the anticipation rejection.

Applicant’s claim 1 as amended recites a “method of promoting a theater show.” That inventive method includes steps of: “for a to-be-promoted theater show, establishing an Internet site relating to the show; and, after posting the site, distributing a permanent non-paper announcement item for the site.” (Applicant’s claim 1.)

Matsukawa fails to teach or disclose promoting a theater show. This is a substantial, not a negligible, deficiency in Matsukawa. Promoting a theater show, especially without a famous composer/writer, presents particular difficulties from promoting, for example, goods, established companies or even known artists.

Another distinction is that Matsukawa fails to teach or disclose “distributing a permanent non-paper announcement item for the site.” (Applicant’s claim 1.) Rather, Matsutake [0013] teaches to avoid calendars, notebooks, fans, towels, etc. printed with the company information and to instead attach the company information to a sophisticated piece of music. Matsukawa is saying that it is cheaper for an advertiser to advertise on a distributed piece of music than to advertise on a tangible good. Matsukawa not only fails to disclose using a tangible item plus the website, Matsukawa entirely teaches away from using a tangible item.

¹As a housekeeping matter: although the Office Action mentions “2002” as the prefix for Matsukawa, the published application actually was found at 2001/0042017.

In Applicant's dependent claim 2, the permanent non-paper announcement item is a beach towel including the Internet site address. Matsukawa mentions a towel for the purpose of expressing that such distribution items are to be avoided in Matsukawa. In Applicant's claim 2, a towel is required with the Internet address is required, which is completely opposite Matsukawa.

In Applicant's claim 4, "a new musical theater work is promoted," which is not disclosed in Matsukawa.

In Applicant's claim 6, "the announcement item is reusable." This feature is not disclosed in Matsukawa, and, to the contrary, Matsukawa teaches that a tangible distribution item is to be avoided.

In Applicant's claim 9, the website includes a "musical sample clip of a tune from the show." Matsukawa fails to teach or disclose such a relationship between the music he uses on his website and what is being promoted (i.e., the company being promoted).

Applicant's independent claim 14 recites a "promotional beach towel ... including an Internet domain name relating to a creative-work, wherein the name is for an Internet website on which appears content relating to the creative-work." By contrast, Matsukawa teaches away from using a towel. Matsukawa fails to teach or disclose a towel bearing an Internet domain name, where the Internet domain name is specifically for a website on which appears content relating to a creative-work.

Wherefore, reconsideration and withdrawal of the anticipation rejection based on Matsukawa are respectfully requested.

Nor is the present invention obvious over Matsukawa. Matsukawa does not address the special problems of promoting a theater show. For promoting a theater show (especially an entirely-new show), as the present invention does, it is not an easy matter to establish, maintain and build interest over the years of developing a new show. The creators and producers of the show may want various people not only to refer to the website at one point in time, but, preferably, to follow the progress of the show. If such people have been given a permanent announcement item (such as a beach towel) with the show's website address, that beach towel or other permanent item is more likely to be taken out and used than a paper item (such as a business card, post card, letter, etc.). That permanent item will serve to remind its owners of the show, and with the website address easily in view, the

item's owner may pull up the website address if he wants to check on the show's progress. The permanent announcement item of the present invention from time to time is intended to activate the curiosity of its owner. The present invention lengthens the time for which "buzz" for a show may be started to be created. Thus, the present invention is not obvious over Matsukawa.

At page 4 of the Office Action, Claims 5 and 18-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Matsukawa in view of Deitrickson (US 2002/0165797 A1).

Applicant respectfully traverses this obviousness rejection.

Applicant's dependent claim 5 is distinguished from Matsukawa for at least the distinctions set forth above with regard to claim. 1. Additionally, in Applicant's claim 5, a new musical theater work is promoted. Matsukawa is not promoting a new theater work (or any theater work), but rather, is promoting company information, using music to promotion a company or give a company a slot for an advertising message in conjunction with music delivery.

In Applicant's claim 5, the website "includes a ticket purchasing feature for the new musical theater work." Matsukawa fails to disclose theatrical ticket sales. Although the Examiner recognizes this deficiency in Matsukawa, the Examiner has given the deficiency too little weight. The problem of how to promote ticket sales for a theater show is substantial. Promoting a live show (such as a theater show, especially a new show by an unknown creator) which is held in only one specific place for a specific show time on a few specific days is quite different than the problem dealt with by Matsukawa of promoting a company which is a fixed, established entity.

The present invention addresses the problem of how to promote a theater show, a problem which Matsukawa does not address, nor can Matsukawa be easily tweaked to solve, as the Examiner seems to propose.

The problem of how to advertise a new musical theater work on a small budget is a huge problem faced by creators who are not already-famous, already-connected to a funded advertising system. A conventional approach is for a new creator to try get his work on stage (a short showcase run in a small theater), and to spread the word about the show to producers and backers. However, it is difficult and expensive to try capture attention of the people whom the creator may want in

the audience for a premiere show.

A person of ordinary skill in the art would not have been motivated to use Deitrickson to modify Matsukawa in the direction of Applicant's invention. Deitrickson would not permit Applicant's invention to be reached. Deitrickson teaches interactive marketing using CDs [0003], using a product that is multimedia combination of a music video and "today's equivalent of the old 45 rpm singles of the past." [0008] The consumer needs to receive a micro CD (or DVD or the like), which then (assuming the recipient chooses to use the CD) can be used to do such things as play music videos, reach the Internet to purchase concert tickets, etc.

Matsukawa and Deitrickson are not reasonably combinable as the Examiner proposes, because Matsukawa teaches to avoid any tangible distribution item and Deitrickson relies on a tangible distribution item (a micro CD or DVD).

Accordingly, reconsideration and withdrawal of the obviousness rejection based on Matsukawa combined with Deitrickson are respectfully requested.

At page 5 of the Office Action, Claims 8 and 16 have been rejected under 35 U.S.C. 103(a) as unpatentable over Matsukawa in view of Sheppard (US 2003/0131901 A1).

Applicant respectfully traverses this obviousness rejection.

As set forth above distinguishing Matsukawa from claims 1 and 2, Applicant again notes that Matsukawa teaches away from using a tangible item such as a beach towel on which appears the Internet address. Rather, Matsukawa teaches avoiding use of tangible promotional items. Beach towels with the show's web address embroidered as recited in claims 8 and 16 have been found to give unexpectedly superior results over other announcement items:

<u>Announcement item:</u>	<u>Features</u>
Paper postcard	tends to be discarded after single reading or use
Beach towel with ironed-on web address	used more, kept longer than a postcard
Beach towel with embroidered web address	used more, kept longer than a postcard; web address outlasted ironed-on version

The secondary reference, Sheppard, fails to teach or disclose promoting a

theater show. Nor does Sheppard teach embroidering a theater show's website address on a towel.

The combination of Matsukawa and Sheppard that the Examiner proposes is not reasonable, because Matsukawa teaches away from tangible promotional items, such as the goods that Sheppard teaches.

Accordingly, for the several reasons set forth above, reconsideration and withdrawal of the obviousness rejection based on Matsukawa combined with Sheppard are respectfully requested.

At page 5 of the Office Action, Claims 10-11 and 13 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Matsukawa in view of Newman (US 2002/0069176 A1). At page 6 of the Office Action, Claim 12 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Matsukawa in view of Weight (US 2003/0023638 A1). Those rejected claims having been canceled from this application, without prejudice, these two rejections are believed to be obviated and no response needed here.

At page 7 of the Office Action, Claims 13 and 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Matsukawa in view of Sherman (US 2002/0051119 A1).

Claim 13 having been canceled without prejudice, no response is made regarding that claim. The obviousness rejection as to claim 17 is traversed.

Matsukawa teaches away from using a tangible promotional item such as a towel. The Examiner's position that a person of ordinary skill in the art would combine Matsukawa and Sherman to arrive at a promotional towel is artificial. That is not how such a person would read Matsukawa and Sherman. Matsukawa teaches using audio clips to promote a company or company information by combining an advertising message with a specific musical piece selected by the company for advertisement. The advertisement message partly overlays the beginning and end of the musical piece, so that when the music is played, the advertising message is played with the music. Sherman teaches a video karaoke system. Even with Matsukawa and Sherman, a person of ordinary skill in the art still does not have suggested to him how to promote a theater show. The two references are silent as to teaching of promotion of a theater show using an Internet website plus a permanent announcement item bearing the Internet website address.

Importantly, neither Matsukawa nor Sherman address how, in the case of a theater show, website visitors are to be gotten to visit the website, for which the towel recited in Applicant's claim 17 is essential.

Wherefore, reconsideration and withdrawal of this obviousness rejection are respectfully requested.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 1-2, 4-9, 14-18 and 21-23 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephone or personal interview.

A provisional petition is hereby made for any extension of time necessary for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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